IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 405 of 2000

Date of decision: 31.8.2007

State of Himachal Pradesh **Appellant**

Versus

Nargu Chhering & others **Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondent: Mr. Vinay Thakur, vice counsel

Deepak Gupta, J. (Oral)

This appeal is directed against the judgment of the learned Chief Judicial Magistrate, Kinaur at Reckong Peo in Criminal Case No. 188/2 of 1994, decided on 31.5.1999 whereby he has acquitted the accused of having committed an offence punishable under Section 353 IPC.

The prosecution version in short is that on 28.10.1994 complainant Shiv Kumar was driver of HRTC bus bearing No. HP-25-0724. He had taken the bus from Reckong Peo to Nako and was returning from Nako at

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

3.00 p.m. The three accused entered the bus and purchased tickets upto Skiba. According to the prosecution version these persons were all drunk. They refused to pay the bus fare and quarrelled with the conductor. It was further alleged that they assaulted and beat the conductor as well as the driver. Challan was filed and the accused pleaded not guilty. The prosecution examined a number of witnesses. The most material witnesses are PW-1 Gian Chand, the conductor of the bus and PW-4, Shiv Kumar, the driver of the bus.

According to PW-1 Gian Chand the accused boarded the bus and though tickets were given to them, they refused to pay the fare. He further submits that they tore up the tickets and when he asked them to pay the fare, they moved here and there in the bus. He also states that the accused quarrelled with him. However, this witness does not say a word as to whether they threatened, assaulted or hit the witness. According to this witness the accused want near the seat of the driver where some scuffle took place. It is further stated that at Pangi Nullah the bus was stopped due to the behaviour of the accused and from there straightaway the driver took

the bus to the Police Station at Reckong Peo where the complaint was lodged.

The version of PW-4, Shiv Kumar is totally different. According to him the accused beat the conductor and he (the witness) and other passengers of the bus saved the conductor from the clutches of the accused. He has clearly stated that the accused did not hit him or threaten him. It is thus apparent that both these witnesses have given two contradictory versions and do not support the prosecution case at all.

It may be true that the accused were drunk. This version is supported by the evidence of PW-2, Dr. Anita Negi, who had examined all the three accused at 10.00 p.m. on 28.10.1994 and found that they were drunk. However, this by itself is not an offence punishable under Section 353 IPC. To constitute an offence under Sections 353 IPC it was incumbent upon the prosecution to prove that the accused had assaulted or used criminal force against a public servant. This has not been proved. Even if the statements of PWs 1 and 4 are read as a whole, there is no proof of the fact that any gesture or preparation was made to use criminal force against either of the said witnesses. As already pointed out above,

whereas the conductor has stated that it was the driver against whom the criminal force was used, the driver states that he was not assaulted, but it was the conductor who was assaulted. The conductor has not stated anything about the assault on him.

Keeping in view the aforesaid discussion, there is no merit in the present appeal which is accordingly dismissed. The bail bonds of the accused are discharged.

August 31, 2007(K) (Deepak Gupta), J.